

are necessary, proper or customary for the diversion of water. There are several expressions in the instrument under consideration that indicate this. The right granted is to "take and use" the water, and "for said purposes to enter upon the lands of the lessors and construct such dams or other works "as may be necessary in order to obtain and use" such water. Again, "And also that if the lessee shall think fit to take and use the water of the said Makaweli river before taking the water of the Koula river he shall be at liberty to do so, but if he shall do so he shall not take or use the water from the Koula river unless within six years after he shall have commenced making sugar on the demised premises;" * * * "and that in any case the lessee will not enclose the demised lands before commencing the construction of one or the other main water leads;" upon surrender of the lease, "the lessee shall be at liberty to remove from the demised premises all buildings and houses, mills and machinery, but not * * * any standing fences, wharf fixtures or mooring buoys, flumes or water piping thereon;" * * * "And the lessee shall always have the right of way for and access to his piping, ditches, flumes and tramways over all the lessors' lands;" * * * "And that the lessors may have five watering places along the line of the lessee's main water lead for watering the live stock of the lessors." It is the diversion of the water for use on the demised lands below that is here intended and provided for, and not a use on the spot without diversion.

If the power of the running and falling waters may of right be used by the lessees for generating electricity by the establishment of machinery, etc., in the river bed or on the adjoining land, then this construction will lead to the result that other manufacturing establishments beneficial to the plantation may be similarly set up, as, for example, saw-mills and planing-mills driven by such power for preparing planks and other lumber for use in mill-buildings and other structures on the plantation below; or even the sugar mill itself might be erected and maintained at any water-fall in the stream, if it were deemed profitable or desirable to do so. The principle is the same,—it would be a use of the same power, at the same place and for the permitted purposes. No such grant of the right to so use the lands not demised was contemplated or can be held to have been created by the language of the lease.

No question is raised in this case as to the defendant's right to use the granted water in any way it sees fit, after it has reached the demised lands, provided only it is for the purposes named in the instrument.

The main object of the lease was no doubt the establishment of a large sugar-cane plantation, and the granting of facilities which would tend to make the enterprise a success. At the same time, it is clearly apparent from a study of the lease that the lessors were extremely careful to make all possible reservations and exceptions in their own favor, and this too in addition to the rent or direct compensation stated, which consists of a share of the product. "No rights outside of the demised premises other than herein granted are hereby secured to the lessee," they added. Just what agreement the parties would have entered into in regard to electricity had that subject been mentioned or thought of, is altogether a matter of conjecture. The lessors may possibly have yielded to the lessee's rights equivalent to those now claimed by the latter, but there is at least as much ground for believing that the right, if granted, would have been made subject to some restrictions and reservations.

To the first question submitted, to wit, "whether or not the Hawaiian Sugar Company has the right, under said agreement marked Exhibit A" (being the lease to Watson) "to use all or such as it may require of the power of said stream" (meaning thereby the power of said stream as the water runs and falls therein on lands other than those demised) "during the term of its said agreement for the purpose of generating electricity to be used on its said plantation for its plantation purposes," we answer that the Hawaiian Sugar Company has not such right.

To the second question submitted, to wit, "whether said Fred. J. Cross has the right to proceed and develop said water power under the terms of his said lease," we answer that Fred. J. Cross has such right, subject, however, to all rights acquired by the Hawaiian Sugar Company through the lease to W. R. Watson. These rights of the Hawaiian Sugar Company include, in our opinion, the right to divert and use the water of the Koula river for the purposes stated in the Watson lease, and the right to so divert such water at any point in said river, even above such works as plaintiff may erect for the purpose of creating and developing electrical energy or power.

Magoon & Silliman, Kinney, Ballou & McClanahan and Robertson & Wilder for the plaintiff.

F. M. Hatch, W. O. Smith and R. D. Mead for the defendant.

NUTTING IS SUED

A Breach of Trust is Charged.

WORTHINGTON CO'S AGENT

Alleged That He Collected Firm's Funds and Put in Bank in His Own Name.

Suit was begun yesterday in the Circuit Court by E. W. Husted, auditor of the Henry R. Worthington Company, against L. B. Nutting, local agent of the company, and the Bank of Hawaii. The complaint alleges that Nutting while acting as the agent of the company collected moneys valued at \$5,793.01 belonging to the company and deposited them to his own credit and account at the Bank of Hawaii. As a result of this breach of duty on the part of Nutting, the complaint says, the company has been deprived of money due to it and it has been injured in that amount. The plaintiff asks for an injunction restraining Nutting from withdrawing the funds mentioned and for judgment against him for \$5,793.01 and interest.

Judge Stanley granted a temporary restraining order and it will be heard within the next few days.

SUIT ARISING FROM PLAGUE VISITATION

George E. Boardman Asks \$7,000 Insurance Money For House.

Another of the many cases arising out of the burning of plague-infected houses was begun yesterday in the Circuit Court when George E. Boardman brought suit against the Fireman's Fund Insurance Company of San Francisco for \$7,000 insurance on his residence.

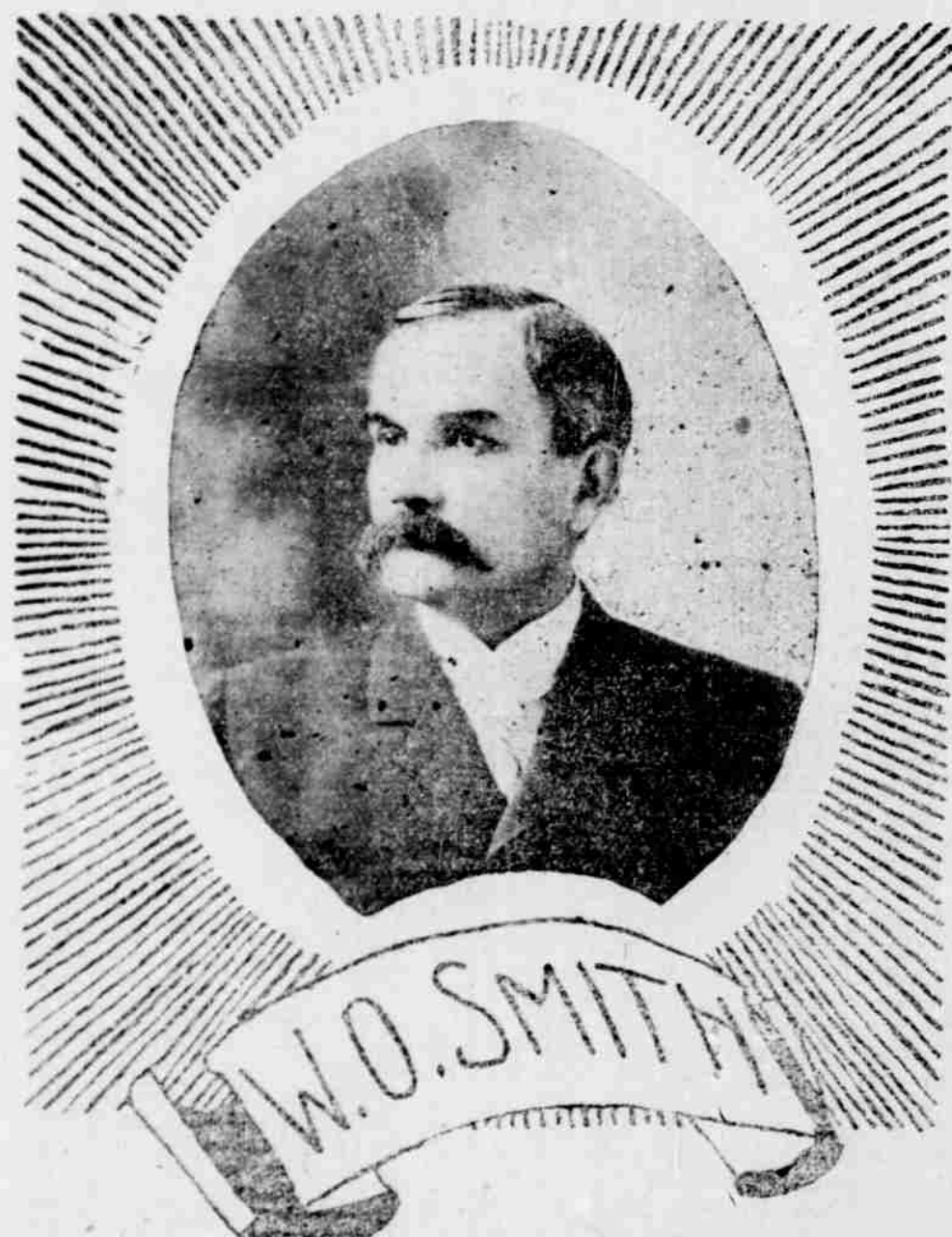
Mr. Boardman's wife was one of the few white persons to succumb to the bubonic plague, and after her death the Board of Health ordered the destruction of the Boardman home, at the corner of Lunaillo and Kaploani Sts. The house and surrounding buildings were all burned, with their contents.

Mr. Boardman's complaint alleges that he carried \$6,200 insurance on his dwelling and \$400 each on two other buildings in the grounds surrounding the house. After it became known that plague was present in his family, he alleges, he was detained by the Board of Health in one of the detention camps, and that meanwhile his house was destroyed without his knowledge and consent, and against his wishes. He asks for the payment of \$7,000 insurance due him from the company. Mr. Boardman's attorneys are S. F. Chillingworth and Humphreys & Andrews.

Petition of Aged Woman.

Piwi Panawea has filed a petition in

W. O. SMITH TAKES ISSUE WITH ATTORNEY-GENERAL ON QUESTION OF ALIEN OFFICIALS



At the meeting of the Governor's Council yesterday it was suggested that Attorney General Dole send to Chief Justice Frear the opinion which he had rendered with reference to the rights of aliens to hold office, and the question of citizenship generally, in order to get a ruling from him on the question.

It is understood that the Chief Justice holds an opinion on the matter that differs materially from that announced by the Attorney General. When asked yesterday for a statement on the question, Chief Justice Frear said that as he was to be called upon for an official opinion on the question, he did not care to be quoted on the subject.

In response to a request for an opinion on the matter, ex-Attorney General W. O. Smith said:

"Section 80 of the Territorial bill provides that the President shall nominate and appoint the Supreme Justices and the Judges of the Circuit Court, and that certain enumerated officers shall be appointed by the Governor of the Territory. These are the Attorney General, the Territorial Treasurer, the Commissioner of Public Lands, Commissioner of Agriculture and Forestry, Superintendent of Public Instruction, Auditor, Deputy Auditor, Surveyor, High Sheriff, members of the Board of Health, Commissioners of Public Instruction, Board of Prison Instructors, Board of Registration and Inspectors of Election, and any other boards of a public character that may be created by law.

"All those officers appointed under the provisions of this section must be citizens of the Territory of Hawaii. All other officers are to be appointed and removed, and their tenure of office fixed by law and nothing is said as to whether such officers must be citizens of the Territory or not. My opinion is that the requirements of Section 80, that certain officers shall be citizens of the Territory, applies solely to officers enumerated in that section, and does not apply to a large class of subordinate officers."

A Mother's Peril

It Seemed Certain that Her Death Would Follow the Birth of the Child—How Help Came After the Doctors Despaired.



Mrs. C. R. Simmonds.

The sacrifice of a woman at the altar of motherhood is not an unusual event, but how unnecessary such sacrifices often are will be seen from the following interview with Mrs. C. R. Simmonds of 140 Mineral Springs Ave., Pawtucket, R. I. Mrs. Simmonds, whose husband is a well known and popular grocer of Pawtucket, says:

"When my child was born on April 22, 1899, I suffered such an excessive loss of blood that I was utterly prostrated and had no strength whatever. Blood poisoning set in and my life was despaired of by two of the prominent physicians of this city. Before my marriage I used Dr. Williams' Pink Pills for Pale People with good results in building up and purifying my blood and when the doctors gave me up, I decided to give the pills a trial, although the case was desperate. My husband bought some of the pills and by the time I had taken three boxes I had gained so much strength that I was able to leave my bed for the first time in two months. I continued taking the pills and in another month could go about as usual. My appetite was good, the color returned to my cheeks and I gained rapidly in weight. I very gladly recommend Dr. Williams' Pink Pills for Pale People to anyone afflicted as I was."

MRS. C. R. SIMMONDS.

Subscribed and sworn to before me this 27th day of August, 1899. [SEAL] THOMAS W. ROBINSON, Notary Public.

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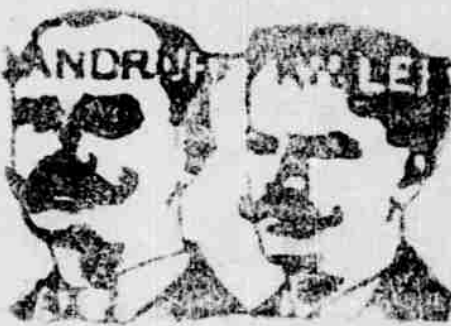
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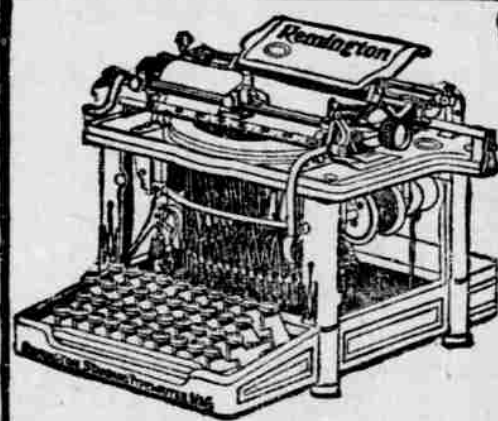
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